 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1024/2019  Permit Application no. TPA/49993 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*, General Residential Zone – Schedule 6, Monash National Employment and Innovation Cluster, whether development is consistent with preferred future character | |

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| APPLICANT | Bello Design Group Pty Ltd |
| responsible authority | Monash City Council |
| RESPONDENTs | Peter Novacco & Others |
| SUBJECT LAND | 4 and 6 Luke Street, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | K Birtwistle, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 30 October 2020 |
| DATE OF ORDER | 27 November 2020 |
| CITATION | Bello Design Group Pty Ltd v Monash CC [2020] VCAT 1334 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | Bello Design Group | |
| * Drawing numbers: | TPO1, TPO2, TPO3, TPO4, TPO5, TPO6, TPO7, TPO8, TPO9, TPO10, TPO11, TPO12 (All Revision B) | |
| * Dated: | 13/09/2019 | |
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1. In application P1024/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49993 a permit is granted and directed to be issued for the land at 4 and 6 Luke Street, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of twelve, two storey dwellings in the General Residential Zone – Schedule 6
* Dispensation for the provision of two on-site visitor car parking spaces

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| **K Birtwistle**  **Member** |  |  |

# Appearances

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| For Bello Design Group Pty Ltd | Mr D Bowden, town planner of SongBowden Planning. He called the following expert witness:   * Mr D Hancox, traffic engineer of TTM Consulting (Vic) Pty Ltd |
| For Monash City Council | Mr David Vorchheimer, solicitor of HWL Ebsworth |
| For Peter Novacco & Others | Mr P Novacco |

# Information

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| Description of proposal | Construction of twelve, two storey dwellings in an attached format. The development comprises two building modules running lengthways into the lots, separated by a central common vehicle accessway providing access to each garage. Common pedestrian pathways along the northern and southern property boundaries provides access to each respective dwelling. The dwellings are a mix of traditional and reverse living format, and all have two bedrooms. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone – Schedule 6 (GRZ6) |
| Permit requirements | Clause 32.08-6 – Construction of two or more dwellings on a lot  Clause 52.06 – Dispensation from on-site visitor car parking requirement |
| Land description | The land is comprised of two adjoining lots on the eastern side of Luke Street, south of Iona Street, Clayton. It is rectangular in shape, with a frontage width to Luke Street of 39.6 metres and an overall site area of 1,570 sq.m. The site has a fall of approximately 2.5 metres towards the rear south-eastern corner of the site. The site is located approximately 170 metres to the east of the Monash Medical Centre and 800 metres to the south-east of the Clayton Activity Centre and railway station. |
| Tribunal inspection | Unaccompanied subsequent to the hearing |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. Bello Design Group Pty Ltd (the applicant) lodged an application to develop eight, two storey dwellings at No’s 4 and 6 Luke Street, Clayton. In April 2019, Monash City Council (the Council) determined to refuse to grant a planning permit for the proposed development. The permit applicant has requested the Tribunal to review Council’s decision.
2. Council refused the proposal on the following grounds:

* The proposal is inconsistent with the Residential Development Policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having particular regard to the desired future character for the area.
* The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regard to neighbourhood character, site layout and building massing, setbacks, integration with the street, access provision, amenity impacts, private open space provision and detailed design.
* The proposal does not adequately satisfy the requirements of Clause 52.06 of the Monash Planning Scheme with regard to parking layout and vehicle access.
* The proposed development is not consistent with the Monash Housing Strategy.
* The proposed development is not appropriate for the locality in regard to its adverse impact on the streetscape, adjoining properties and general neighbourhood character.
* The proposed development would adversely affect the landscape character of the area.
* The proposed development will have a detrimental impact on future development of the area.
* The proposed development is considered a poor design outcome and an overdevelopment of the site.

1. Prior to the commencement of the hearing, the applicant circulated amended plans in accordance with the Tribunal Practice Note PNPE9. The plans differ from the decision plans in the following respects:

* A redesign of the proposal from 8 townhouses to 12 terraced dwellings;
* Increasing the front set back to 4.7 metres;
* Providing pedestrian pathways along the northern and southern sides of the site;
* Providing a side set back of 4.3 metres and removing a proposed wall on the boundary;
* Providing for one common crossover and driveway for all dwellings;
* Providing secluded private open space (spos) in the form of balconies; and
* Providing screening to the balconies of Dwellings 2 to 5.

1. As a result of these amended plans, a new permit trigger for a dispensation from on-site visitor car parking (2 spaces) has arisen.
2. Despite the amended plans, Council continues to maintain its opposition to the proposal.
3. There being no objection, I allowed the amended plans to be substituted and these now form those on which my decision is based.
4. Mr Novacco (the respondent) resides to the north of the review site. He supports the Council’s decision and its grounds of refusal. He says that the development will result in overlooking and a loss of privacy to his spos, does not provide sufficient space for landscaping and is inconsistent with the existing neighbourhood character.
5. The applicant says the GRZ6 supports an expressed desire to increase residential densities. It says that the development is consistent with the varied standards that apply, and that the layout and design of the proposed dwellings display a high level of compliance with the objectives and Standards of Clause 55.

## WHAT ARE THE KEY ISSUES?

1. Having considered all the submissions and evidence and inspected the subject land and its locality, I must determine the following key issues in this matter:

* Is the development an appropriate response in this neighbourhood?
* Does the proposal provide appropriate carparking and access?
* Does the development provide an acceptable level of amenity for neighbouring properties?

1. I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Monash Planning Scheme, and undertaken a site inspection, I have decided to set aside the decision of the responsible authority and direct that a permit be granted.
2. My reasons follow.

## planning context

1. It is state planning policy to create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.[[2]](#footnote-2)
2. Clause 11.01-1R seeks to focus investment and growth in places of state significance, including National Employment and Innovation Clusters (NEICs) and Metropolitan Activity Centres. The review site is located within the Monash NEIC as shown in Clause 11.01-1R.
3. Clause 16.01-2R seeks to manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that, amongst others, are designated as NEICs.
4. At the time the Notice of Refusal was issued, the land was zoned General Residential Zone – Schedule 2 (GRZ2) and was not affected by any overlay controls. The then GRZ2 varied the following Clause 55 ResCode standards:

* Standard B6 – requiring front setbacks to be a minimum of 7.6 metres;
* Standard B28 – by requiring 75 sq.m. of private open space provided at either ground level, an 8 sq.m. balcony (minimum 1.6 metre dimension) or a 10 sq.m. rooftop terrace (minimum 2 metre dimension); and
* Standard B32 - A front fence within 3 metres of a street should not exceed 1.2 metres.

1. On 14 November 2019, the Minister approved Amendment C125 (Part 2), which rezoned the land from GRZ2 to GRZ6, and amended Clauses 21.04 and 22.01 of the Planning Scheme. The GRZ6 now provides the following neighbourhood character objectives:

* to facilitate housing diversity in the form of units, townhouses and apartment developments of high quality design and finish;
* to provide an interface between the Clayton Activity Centre, the Monash Employment and Innovation Cluster, the housing growth area and the lower scale surrounding garden city suburban areas;
* to encourage development that respects sensitive residential interfaces and minimises building mass and visual bulk in the streetscape through landscaping in the front setback and breaks and recesses in the built form;
* to promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas; and
* to ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.

1. In contrast to the then GRZ2, the now GRZ6 varies the following Rescode standards:

* Standard B6 - walls of buildings should be set back at least 4 metres from the front street;
* Standard B13 - new development should provide or retain:
  + at least one canopy tree, plus one canopy tree per 5 metres of site width;
  + a mixture of vegetation including indigenous species;
  + vegetation in the front, side and rear setbacks;
  + vegetation on both sides of accessways; and
  + a canopy tree should reach a mature height at least equal to the maximum building height of the new development.
* Standard B17 - a new wall not on or within 200mm of a rear boundary should be set back at least 4 metres;
* Standard B28 - private open space for a dwelling should consist of:
  + an area of 50 sq.m. with one part of the private open space to consist of secluded private open space at the side or the rear of the dwelling with a minimum area of 35 sq.m., a minimum dimension of 5 metres and convenient access from a living room; or
  + a balcony or roof top area of 10 sq.m. with a minimum width of 2 metres and convenient access from the living room; and
* Standard B32 - a front fence within 3 metres of a street should not exceed 0.9 metres in height.

1. The relevant decision guidelines of the GRZ6 now include:

* Whether the development provides an appropriate transition to built form on adjoining sites;
* The robustness of proposed materials and finishes;
* The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule;
* The location and number of vehicle crossovers;
* The impact of the development on nature strips and street trees; and
* The location, quantity and species of vegetation provided.

1. Clause 21.04 Residential Development sets out the Councils objectives and strategies for residential development. It details a residential development framework that is derived from the Council-adopted *Monash Housing Strategy 2014* (Housing Strategy)*.* The Housing Strategy identifies the future character of the Monash National Employment Cluster (NEC) as follows:

Development within the Cluster will respect the changing built form within the commercial areas. The scale of new residential development will generally comprise larger footprint apartment development of a high quality design and finish. Some infill development, town house and unit development, will also occur.

Improved building density and quality will be encouraged, to maximise the comfort of future residents (and neighbours) as well as minimising running and maintenance costs.

The Cluster will develop to create a ‘campus feel’, through developments set in open garden settings, as well as less intense development that presents a uniform presentation to the street (often attached).

Provision of more affordable accommodation will be important, and a diversity of dwelling sizes will be encouraged, especially within the vicinity of the university or public transport.

Landscaping treatments to the streetscape will be important, as the native canopy tree setting is a major element of the attractiveness of the area.

1. The following ‘residential outcomes’ are specified for the Monash NEC:

Higher density apartment development at the interface with the technology precinct.

Lower density unit and townhouse style development at the interface with surrounding residential land areas.

Potential for lower to medium density apartment development in predominantly residential streets subject to careful design.

On larger sites in suitable locations, increased density may be appropriate, subject to careful design and the provision of appropriate landscaped setbacks.

1. Further, an objective of clause 21.04-3 is:

To locate residential growth within neighbourhood and activity centres, the Monash national employment cluster and the boulevards (Springvale Road and Princes Highway) to increase proximity to employment, public transport, shops and services. This will assist to preserve and enhance garden city character and special character in the balance of the municipality.

1. Clause 22.01 Residential Development and Character Policy, is also relevant as it applies to all residential land. An objective is to direct residential growth to neighbourhood and activity centres, the Monash NEC and the boulevards of Springvale Road and Princes Highway.
2. With respect to the Monash NEC and Clayton Activity Centre it says:

The Clayton Activity Centre and the cluster more broadly are expected to experience major redevelopment, as one of the key areas for employment growth within Melbourne. As such, the core of the activity centre and the cluster are anticipated to accommodate growth and more diverse housing needs. This area also forms an interface to the surrounding garden city suburbs. New development should provide a transition between these areas.

New housing will generally comprise multi dwelling developments such as units and, where appropriate, low rise apartments. Front and rear setbacks will be less than those preferred in the garden city areas, however will still provide the opportunity for landscaping. Landscaping and open space within developments will remain an important feature for this character area. Canopy trees within developments and separation between buildings will provide visual and environmental amenity for occupants and the residents of existing dwellings. New developments will be designed and constructed to a high standard, ensuring they provide a positive architectural impact.

The scale of new residential development will generally comprise larger footprint apartment development of a high-quality design and finish. Some infill town house and unit development will also occur.

Where possible on larger sites, developments will be multi-level, and set in open gardens. Although setbacks from all boundaries will be less than is common in other parts of Monash, the developments will ensure the incorporation of well-maintained landscaping to address the garden city character, albeit in a more urban form

## Is the development an appropriate response in this neighbourhood?

### What do the parties say?

1. The Council says that although the site is located within the NEC and the GRZ6, it is also within a ‘dead-end’ street comprised of predominantly modest single and two storey dwellings, set amongst sparsely vegetated lots.
2. They say that the design response does not achieve architectural and urban design outcomes that positively contribute to the prevailing and preferred neighbourhood character of the locality.
3. Whilst acknowledging that the immediate area is identified for housing change, they say that the proposal’s bulk, mass and integration with the street is not responsive and is inconsistent with the desired future character of the area. They are critical of the following aspects of the design response:

* the front setbacks;
* the lack of façade articulation;
* the lack of first floor recesses;
* the lack of building separation;
* the box-like design; and
* the limited potential for the provision of landscaping including canopy trees.

1. In summary, they say that the proposal results in a visually bulky built form and that the garden setting sought by policy is not delivered.

### What are my findings?

1. This is an area where change and more intensive forms are anticipated by the Planning Scheme. This is evidenced by the change in zoning since the application was originally considered by Council and the consequent changes to, amongst other matters, the varied ResCode Standards.
2. The comparisons are evident in the table below:

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|  | **GRZ2 required** | **GRZ6 required** |
| Standard B6 | 7.6 metre front setback | 4 metre front setback |
| Standard B13 | No variation from Standard | One canopy tree plus one canopy tree per 5 metres of site width, mixture of vegetation type, in front, side and rear setbacks and on both sides of accessways |
| Standard B17 | No variation from Standard | A new wall not on or within 200mm of a rear boundary should be set back at least 4 metres |
| Standard B28 | 75 sq.m. of private open space at either ground level,  an 8 sq.m. balcony (minimum 1.6 metre dimension) or  a 10 sq.m. rooftop terrace (minimum 2 metre dimension) | 50 sq.m. with one part of the private open space to consist of secluded private open space at the side or the rear of the dwelling with a minimum area of 35 sq.m.,, a minimum dimension of 5 metres and convenient access from a living room; or  a balcony or roof top area of 10 sq.m. with a minimum width of 2 metres and convenient access from the living room |
| Standard B32 | Front fence within 3 metres of a street should not exceed 1.2 metres in height | Front fence within 3 metres of a street should not exceed 0.9 metres in height |

1. So, while the GRZ6 has now, for example, reduced the front setbacks, it has also increased the private open space requirement if in balcony form. It also now seeks that all walls, not on a rear boundary, be set back 4 metres.
2. My reading of the GRZ6 is that it encourages residential intensification but with landscaping remaining a unifying feature of the streetscape and within the backyard realm. This is evident in the varied Standards B6, B13, B17 and B28.
3. Council concede that the application complies with the varied standards. I note that the proposal in fact exceeds varied Standard B6, having a front setback of 4.7 metres. Nevertheless, the Council says the proposal is an overdevelopment of the land. They say this because of the increased intensity of the proposal (in the form of an increase in dwelling yield of 50% from the eight dwellings originally considered to the twelve now proposed).
4. I do not agree with Council that this means the development is an overdevelopment of the land. A simple extrapolation of increased dwelling numbers does not necessarily lead to a finding that the proposal is an overdevelopment of the land.
5. The zoning of the land, the relevant policies, and the Housing Strategy all envisage more intensive development for the land. While Council says that the amended plans represent a significant increase in the yield of dwellings than that already refused by Council, I consider that the application as originally proposed would have represented an outcome more generally considered in those parts of the municipality where incremental change is envisaged and provided for. In this case, I consider the increased dwelling yield responds directly to the planning levers that apply to the land.
6. Further, in the planning context that applies to this land, what is sought in this location is not development which fits in with the existing character. The existing character does not reflect the current directions embodied in the Planning Scheme or the strategic work undertaken by the Council in both its Housing Strategy and Amendment C125. So, any significant reliance on a development’s “fit” with the existing residential character, in my view, is a misreading of the relevant planning context.
7. Instead, the Planning Scheme (in the objectives to the GRZ6) seeks to *facilitate* housing diversity in the form of units, town houses and apartment developments. By their nature, this new residential development will depart from the existing residential character. The varied Clause 55 standards are part of this. I give the proposals compliance with these varied standards some weight in assessing the proposal’s acceptability including its response to Clause 32.08, GRZ6 and the preferred character.
8. With respect to the design response, the neighbourhood character objectives expressed in the GRZ6 seek:

* development that respects sensitive residential interfaces;
* a minimising of building mass and visual bulk in the streetscape through landscaping in the front setback and breaks and recesses in the built form;
* a minimising of hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas; and
* developments within an open garden setting.

1. I consider the following elements positively respond to GRZ6 and the preferred character objectives:

* The use of two separate building modules with built form extending down the length of the site, and the central open break reduces the dominance of the built form when viewed from the street. The two separated modules repeat the rhythm and spacing of the detached dwellings within the streetscape.
* The building modules have been set back 4.5 metres from the northern and southern side property boundaries, which protects the sensitive interfaces, including that of the respondents spos.
* The side setbacks, combined with the compliant front and rear setbacks, allow the opportunity for the planting of a spine of landscaping along each boundary, to provide some screening of the built form.
* There is appropriate separation around the building modules as there are no walls proposed on the boundaries.
* The building modules have a maximum building height of 7.7 metres which is well under the maximum allowable (being 11 metres and three storeys), and at most only a one storey variation from its neighbouring properties.
* With a site coverage of 43%, a permeability of 49%, and a garden area of 35.4%, there is sufficient balance between built form, hard paving and landscaped areas.
* The upper level sheer elements are treated architecturally to provide some visual interest. In an area in which significant change is envisaged and to be facilitated, the massing is acceptable.
* The use of a single shared crossover and accessway minimises the use of hard paving on the site.
* The garages are integrated into the design of the building modules and will be largely invisible from the street.
* The development is not box-like, having a combination of pitched and flat roofed form with overhang and extruded projections.
* The indicative Landscape Plan details the planting of 25 trees (with canopy heights of between 5 and 12 metres at maturity) around the edges of the site.

1. Finally, this is a street that has been identified within planning policy for change. The Council’s submission does not articulate specific locations where it says visual bulk would represent an excessive impost or unacceptable outcome. In my view, this is not a development that will have a significant presence in the streetscape.

## Does the proposal provide appropriate carparking and access?

### What do the parties say?

1. The Council says a dispensation in visitor car parking is not appropriate as the density of the development would impact on Luke Street which is a small no-through road with limited capacity for car parking.
2. The applicant relies on the evidence of Mr Hancox. His evidence is that while the proposal may result in a doubling of the number of vehicles currently using Luke Street, based on Clause 52.06-8, there is ample physical capacity to accommodate such growth. He says that based on the width of the street, it has the capacity to accommodate approximately 2,000-3,000 movements per day, and that the proposal will contribute less than 10% towards its total physical capacity.
3. With respect to the provision of a passing bay within the site, he says that one is not required under the Planning Scheme as the shared accessway is not more than 50 metres in length. The development makes provision for a new 3 metre wide crossover to the site and removed 2 existing crossovers.
4. Finally, his evidence is that based on parking surveys undertaken, there are sufficient on-street parking spaces available to accommodate any visitor parking needs for the site.

### What are my findings?

1. In considering whether to reduce or waive the requirement to provide on-site visitor car parking, the Planning Scheme requires the responsible authority to consider, amongst other matters:

* the car parking demand assessment;
* the availability of alternative car parking in the locality of the land;
* local traffic management in the locality of the land; and
* access to and provision of alternative transport modes to and from the land.

1. The parking surveys undertaken in Mr Hancox’s evidence show that there are typically between 32 and 39 on-street parking spaces vacant within close proximity of the review site on surveyed weekend and evenings. During these periods the car parking is unrestricted. As visitor parking needs normally most frequently occur on weekends and evenings, I am satisfied that there is sufficient on-street capacity to accommodate the shortfall of 2 visitor spaces on the site. The reduction from the two existing crossovers to the site and the replacement with a single crossover will also add capacity for one additional on street parking space in front of the site.
2. Finally, I am satisfied that the traffic that will be generated by the development will not present any unsatisfactory traffic safety or capacity issues on the adjacent road network or within the site. While the swept path diagrams demonstrate that internal movements within the site will be “tight’ (to use the language of Council), they do satisfy *AS2890.1:2004 Parking Facilities: Off-street car parking* requirements. I am also satisfied that residents will become familiar with the movements such that they become the norm, and that the internal accessway is a low speed environment in which drivers can take their time to manoeuvre safely in and out of their respective garages.

## Does the development provide an acceptable level of amenity for neighbouring properties?

1. Mr Novacco is concerned that the proposal will give rise to overlooking of his small spos on the northern side of the review site. He says that this space is highly prized and currently enjoys views of distant trees and sky.
2. I am satisfied that there is no potential overlooking available to his spos or any other adjacent neighbours. The upper level elevations either have screening to balconies, or use obscured glazing, where required, under the Standard.
3. Whilst Mr Novacco says the proposal will be bulky when viewed from his small area of spos, I am not persuaded that the proposal represents unacceptable visual bulk (based on its compliance with the relevant standards) nor is unduly limited in landscape opportunities based on the planning context that applies to the land.
4. The plans detail the degree to which the proposal complies with Standard B17 with respect to the side setbacks to Mr Novacco’s property. A large part of his spos is under cover. Once developed, the view from Mr Novacco’s spos will be on a two storey building setback 3.4 metres at the upper level from their shared boundary. The Landscape Plan details the planting of 5 Capital Pear trees along this interface, which will have a mature height of 11 metres. As the maximum building height is 7.7 metres, this landscaping will make a contribution towards filtering the views of this elevation of the built form.
5. Based on the planning context, it is inevitable that a change from the existing character experience evident from the spos of the respondents property is inevitable. It is also relevant that being able to see a building is in itself not a reason for an application to be refused. Two storey development in a residential context is not unusual (in fact there are many examples of two storey form in the immediate vicinity of the site). I am therefore satisfied that the proposal will not give rise to unreasonable amenity impacts to the spos of the neighbouring properties.

## Are there any other matters?

1. Part way through the hearing, Council identified a potential technical concern with the proposed screening measures for the upper level balconies. This is because the proposal seeks to use splayed screens which extend out beyond the edges of the balconies over the spos below. Councils concern is that the use of this type of screening may reduce the proposals technical compliance with the mandatory garden area requirement of the Scheme (although it conceded it had not done that calculation to determine if that where the case).
2. As this was raised late in the hearing, the applicant agreed that a condition should be included on any permit to demonstrate that the screening measure proposed would continue to satisfy the mandatory garden area requirement. Since I have no definitive position from Council that the garden area is not met, using an abundance of caution, I have required this via condition.

## WHAT CONDITIONS ARE APPROPRIATE?

1. Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.



## conclusion

1. For the reasons explained above, the decision of the responsible authority is set aside. A permit is issued subject to conditions.

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| **K Birtwistle**  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/49993 |
| Land: | 4 and 6 Luke Street, Clayton |

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| What the permit allows |
| In accordance with the endorsed plans:   * Construction of twelve, two storey dwellings in the General Residential Zone – Schedule 6 * Dispensation for the provision of two on-site visitor car parking spaces |

## Conditions:

1. Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted to VCAT prepared by Bello Design Group (Revision B dates September 2019) but modified to show:
   1. A notation that street trees must be protected by temporary rectangular wire fencing as per *Australian Standard AS 4970*, erected prior to commencement of works until completion. Fence must extend out to at least 2.6 metres.
   2. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on site. Alternatively, it must be set back a minimum of 3 metres from the title boundary, no greater than 1.3 metres in height and must be adjacent to the side boundary fence.
   3. The proposed balcony screening treatment does not impact upon the garden area required to be provided pursuant to Clause 32.08-4 of the Monash Planning Scheme

All of the above are to the satisfaction of the Responsible Authority.

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.
3. Before the commencement of buildings and works, a landscape plan prepared by a Landscape Architect or suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted o and approved by the Responsible Authority prior to the commencement of any works. The plan must be generally in accordance with the Landscape Plan prepared by John Patrick Landscape Architects Pty Ltd, dated October 11, 2019.

When approved the plan will be endorsed and will then form part of the permit.

1. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of the nature strip tree during the construction period of the development hereby permitted.
2. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then be maintained to the satisfaction of the Responsible Authority.
3. Concurrent with the endorsement of any plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority.  The report must include, but is not limited to, the following:
   1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Monash Planning Scheme.
   2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
   3. Document the means by which the appropriate target or performance is to be achieved.
   4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
   5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans

1. Prior to the occupation of any of the dwellings approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.
2. Prior to the commencement of any works on the site (including demolition and excavation), a Construction Management Plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
   1. Hours for construction activity in accordance with any other condition of this permit;
   2. Measures to control noise, dust and water and sediment laden runoff;
   3. Prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
   4. Measures relating to removal of hazardous or dangerous material from the site, where applicable;
   5. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
   6. Cleaning and maintaining surrounding road surfaces;
   7. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
   8. Public Safety and site security;
   9. A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
   10. A Traffic Management Plan showing truck routes to and from the site;
   11. Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
   12. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
   13. Contact details of key construction site staff;
   14. Any other relevant matters, including the requirements of VicRoads or Public Transport Victoria.
   15. Except with the prior written consent of the Responsible Authority, a requirement that construction works must only be carried out during the following hours:

Monday to Friday (inclusive) – 7.00am to 6.00pm;

Saturday – 9.00am to 1.00pm;

Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines).

1. Concurrent with the endorsement of any plans pursuant to Condition 1, a Waste Management Plan must be submitted to and approved by the Responsible Authority for the collection and disposal of garbage and recyclables by a private contractor for all uses on the site. The Waste Management Plan shall provide for:
   1. The time and method of collection of garbage and recyclables from uses;
   2. Designation of methods of collection by the private contractor;
   3. Appropriate areas for bin storage on site and areas for bin placement on collection days;
   4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
   5. The timing collection of all waste so as not to cause disruption to traffic and amenity of the area.
   6. Bins not to obstruct car parking or traffic movement.

Once approved the Waste Management Plan will be endorsed to form part of the permit.

1. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
2. All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.
3. The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the rear easement of 3/45 Panorama Street via a 225 mm pipe and a 900 mm x 600 mm junction pit to be constructed at the south-west corner in the rear easement of 3/43 Panorama Street to Council Standards. (A new pit is to be constructed to Council Standards if a pit does not exist, is in poor condition or is not a Council standard pit). Note: If the point of connection cannot be located then notify Council’s Engineering Department immediately.
4. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Council drains/pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $5,000 is to be paid prior to the drainage works commencing.
5. The existing redundant crossing is to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of the Responsible Authority.
6. A corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
7. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-9 of the Monash Planning Scheme as detailed below:
   1. Driveway to provide at least 2.1m headroom beneath overhead obstructions.
8. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
9. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:

* The development is not started before 2 years from the date of issue*.*
* The development is not completed before 4 years from the date of issue*.*

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**- End of conditions -**

1. The submissions and evidence of the parties, any supporting exhibits provided to the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)
2. Clause 11.01-1R [↑](#footnote-ref-2)